

SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney

BRIAN J. STRETCH (CSBN 163973)
Chief, Criminal Division

ALLISON DANNER (CSBN 195046)
STEPHANIE M. HINDS (CSBN 154284)
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102
Telephone: (415) 436-6816
Fax: (415) 436-6748

email: allison.danner@usdoj.gov
stephanie.hinds@usdoj.gov

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	Case No. CR 07-0634 MMC
)	
Plaintiff,)	APPLICATION OF THE UNITED
)	STATES FOR A PRELIMINARY ORDER
v.)	OF FORFEITURE
)	
DANIEL HICKEY,)	
)	
Defendant.)	

The United States of America, by and through the undersigned Assistant United States Attorneys, respectfully submit this Application of the United States for Issuance of a Preliminary Order of Forfeiture in the above-captioned case. In support thereof, the United States sets forth the following:

On October 9, 2007, defendant Daniel Hickey was charged by indictment with violations of Section 2252(a)(4)(B) (Possession of Child Pornography). The indictment also sought criminal forfeiture, pursuant to Title 18, United States Code, Sections 2253(a)(1) and (a)(3), of the following:

Dell computer, serial number CN-001494-70821-3594872
("subject property").

1 On November 28, 2007, defendant Daniel Hickey, pled guilty and consented to the
2 forfeiture to the United States, all of his right, title and interest in the subject property.

3 Rule 32.2 (b)(1) of the Federal Rules of Criminal Procedure provides that as soon as
4 practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any
5 count in an indictment or information with regard to which criminal forfeiture is sought, the court
6 shall determine what property is subject to forfeiture under the applicable statute. If forfeiture of
7 specific property is sought, the court shall determine whether the government has established the
8 requisite nexus between the property and the offense. If the government seeks a personal money
9 judgment against the defendant, the court shall determine the amount of money that the
10 defendant will be ordered to pay. The court's determination may be based on evidence already in
11 the record, including any written plea agreement or, if the forfeiture is contested, on evidence or
12 information presented by the parties at a hearing after the verdict or finding of guilt. Pursuant to
13 Rule 32.2(b)(2), if the court finds that property is subject to forfeiture, it shall promptly enter a
14 preliminary order of forfeiture setting forth the amount of any money judgment or directing the
15 forfeiture of specific property without regard to any third party's interest in all or part of it.
16 Determining whether a third party has such an interest shall be deferred until any third party files
17 a claim in an ancillary proceeding under Rule 32.2(c).

18 Rule 32.2(b)(3) further provides that the entry of a preliminary order of forfeiture
19 authorizes the Attorney General (or a designee) to seize the specific property subject to
20 forfeiture; to conduct any discovery the court considers proper in identifying, locating, or
21 disposing of the property; and to commence proceedings that comply with any statutes governing
22 third-party rights. At sentencing - or at any time before sentencing if the defendant consents - the
23 order of forfeiture becomes final as to the defendant and shall be made part of the sentence and
24 included in the judgment. The court may include in the order of forfeiture conditions
25 reasonably necessary to preserve the property's value pending any appeal.

26 The United States has established the requisite nexus between the subject property and
27 the offense to which the defendant pled guilty. Pursuant to the provisions of Title 18, United
28 States Code, Sections 2253(a)(1) and (a)(3), any and all right, title, and interest that the

1 defendant holds in the aforesaid property is forfeitable to the United States. Upon the issuance of
2 a Preliminary Order of Forfeiture and pursuant to Title 21, United States Code, Section 853(n),
3 the United States will publish at least once for three successive weeks in a newspaper of general
4 circulation, notice of this Order, notice of its intent to dispose of the property in such manner as
5 the Attorney General may direct and notice that any person, other than the defendant, having or
6 claiming a legal interest in the property must file a petition with the Court and serve a copy on
7 Allison Danner, Assistant United States Attorney, or Stephanie M. Hinds, Assistant United
8 States Attorney, within thirty (30) days of the final publication of notice or of receipt of actual
9 notice, whichever is earlier. This notice shall state that the petition shall be for a hearing to
10 adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the
11 petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's
12 right, title or interest in the forfeited property and any additional facts supporting the petitioner's
13 claim and the relief sought. The United States may also, to the extent practicable, provide direct
14 written notice to any person known to have alleged an interest in the property that is the subject
15 of the Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so
16 notified.

17 WHEREFORE, the United States respectfully requests that this Court enter a Preliminary
18 Order of Forfeiture which provides for the following:

- 19 a. authorizes the forfeiture of the subject property to the United States;
- 20 b. directs the United States, through its appropriate agency, to seize the forfeited property
21 forthwith; and
- 22 c. directs the United States to publish at least once for three successive weeks in a newspaper
23 of general circulation, notice of this Order, notice of the government's intent to dispose of the
24 property in such manner as the Attorney General may direct and provide notice that any person,
25 other than the defendants, having or claiming a legal interest in the property must file a petition
26


27
28 ///

1 with the Court and serve a copy on government counsel within thirty (30) days of the final
2 publication of notice or of receipt of actual notice, whichever is earlier.

3 Dated: 12/19/07

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney


ALLISON DANNER
STEPHANIE M. HINDS
Assistant United States Attorneys